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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,900	08/18/2003	Kevin W. Eyres	200304043-3 (HPC.0068C2US	3212

22879   7590   06/26/2007
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EXAMINER
HOMAYOUNMEHR, FARID

ART UNIT	PAPER NUMBER
2132	

MAIL DATE	DELIVERY MODE
06/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Status

1)☒ Responsive to communication(s) filed on <u>30 January 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1.   This action is responsive to communications: application, filed 8/18/2003;

amendment filed 1/30/2007.

2.   Claims 1-20 are pending in the case.

Response to Arguments

3.   <u>Double Patenting Rejection</u>

Applicant's terminal disclaimer to overcome Double Patenting Rejection has been

approved. Accordingly, the obviousness-type double patenting is hereby withdrawn.

4.   <u>Rejection under Section 112, second paragraph</u>

Rejection under Section 112, second paragraph is withdrawn due to amendments by

the applicant.

5.   <u>Rejection under Section 102(b)</u>

Applicant's arguments to overcome the rejection under section 102(b) is found non

persuasive:

Applicant argues: "In other words, in Dolphin, the key is downloaded and stored in response to

a user request for a particular key and then used or entered to access data. As such, an entered

key is not stored *in response to determining that the entered key is proper*, as required by claim

1." Dolphin does download and store a key in response to a user request for a key.

However, there are additional cited features of Dolphin that teach storing the key in

response to determining that the key is proper. Note that Dolphin teaches subsequent

use of the key after the key is used for the first time (as an example, see col. 6 lines 54-

65). After the key is downloaded to the user's PCMCIA, it will be used for the

subsequent access to information. Therefore, when the key is verified and determined

proper, it will be stored in the user PCMCIA for the subsequent use. Dolphin also

teaches an updating process (zeroization, as shown in col. 7 lines 20-28). In the

zeroization process, the number of usage or the length of time of usage is recorded and

audited using the PCMCIA. When the number of use or length of time expires, the key

is zeroized (see also col. 7 line 28 to col. 8 line 24). Therefore, the key must be stored in

PCMCIA after it is verified and determined that it is not expired, so that it can be used

for subsequent access. More details on Dolphin's updating process can be found in col.

10 line 7 to col. 13 line 48. Specifically, col. 3 lines 34 to 48 shows that the current key

is used in the updating process, and the updated key is used for access to next

publication. Therefore, the current key is clearly stored after it is verified.

Applicant further argues: "Regardless of whether code to prompt for entering a key was initiated when the software was installed, the Examiner has not pointed to anything in Dolphin which discloses that the software *itself* is installed in the system "*in response to determining that the entered key is not proper,*" as recited in claim 1." However, as indicated in the cited portions, Dolphin teaches an updating process to allow access within a time limit, or control access to limited versions of data. The example in col. 12 lines 28 to col. 13 line 34 shows Dolphin teaching access to data (subscription) within a period of six months, and no access thereafter, unless a new key is purchased. Therefore, when the user enters a key to access the data after the sixth month, the keys are deemed improper for accessing the latest version (seventh month), but the data for the sixth month is still accessible. Therefore, while the key is improper for accessing the seventh month publication, the sixth month publication is accessible and can be downloaded. Another example is shown in col. 5 line 40 to col. 6 line 10, where Dolphin teaches partial or "trial period" access. The user enters the code for partial access and will not be allowed full access (for example, cannot print or copy), but still has access to the file for viewing. As mentioned before, Dolphin teaches software as one type of data that can be stored and accessed. Therefore, Dolphin teaches accessing the older version of a software, while requiring a new key when the new version is made available. Therefore, the key is improper for the new version, but the old version is available.

It is also noted that claim 1 installs the software regardless of whether the proper code is entered or not. In other words, entering the proper or not proper key is irrelevant to whether the software is installed, as the software is installed either way. Therefore, the claim can be interpreted as installing the software, and storing the key when it is proper, and initiate a program to ask the user to enter the key, when the key is not proper. It is further noted that applicant's disclosure includes installing a disabling code when the proper key is not entered. Presence of the disabling code allows control of access to the software. Without the disabling code, there is no control over accessing the software, as the unauthorized user (the one without the proper key) will have full access to the software, and the key is immaterial in access control. Note that the utility established for the claimed invention is in software installation with access control. Without access control, a critical element of invention is missing.

Applicant's arguments relative to claims 9 and 16 are substantially the same as their argument relative to claim 1. As discussed above, applicant's argument relative to claim 1 is found non persuasive. Accordingly, applicant's argument relative to claims 9, 16 and the dependent claims is found non persuasive.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7.   Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolphin (US Patent No. 5,457,746, dated Oct. 10, 1995).

7.1.   As per claim 1, Dolphin is directed to a method of installing software in a system, comprising: during an installation procedure, providing a user prompt to request entry of a key (col. 4 lines 39-48. Also note col. 5 line17-20, where "software" is clearly indicated as one of data that may be stored on a CD, and made available to user for installation); determining whether an entered key is proper; in response to determining that the entered key is proper, installing the software in the system and storing the entered key (col. 6 lines 54 to 58 shows access to data (software installation when the stored data is a software) and storing of the key when the key is proper); and in response to determining that the entered key is not proper, installing the software in the system and enabling activation of first code to prompt for entry of the key at a later time (the scenario when the proper key is not entered is taught by Dolphin when a key is expired. According to col. 6 line 58 to col. 7 line 28, when the key is expired (not proper) the program requires entry of a new key. Therefore when the software was installed, the program to prompt for entering a key at a later time, must have been initiated).

7.2.   As per claim 2, Dolphin is directed to the method of claim 1, further comprising: executing the first code; and during execution of the first code, providing another prompt

for entry of a second key (see response to claim 1 and note that a new key (second key) is required after the first key is expired).

7.3.   As per claim 3, Dolphin is directed to he method of claim 2, further comprising: determining, by the first code, whether the second key is proper; and not executing the installed software in response to the second key not being proper (See response to claim 2, and note that the purpose of verification of a key is to allow or disallow access and the standard response to entering an improper key is access denial).

7.4.   As per claim 4, Dolphin is directed to the method of claim 3, further comprising storing the second key in a registry in response to the second key being proper (the new key (second key) must be stored in the registry so it could be checked if it is proper).

7.5.   As per claim 5, Dolphin is directed to the method of claim 4, wherein executing the first code is performed during a startup procedure of the system (As mentioned in response to claim 1, the first code is performed when the key is expired and an access request is made. Therefore, the first code is performed during the startup of the procedure to request an access when the key is expired).

7.6.   As per claim 6, Dolphin is directed to the method of claim 5, further comprising:

during execution of the installed software, providing a prompt for entry of a second key

(col. 4 line 39-55).

7.7.   As per claim 7, Dolphin is directed to the method of claim 6, further comprising:

determining whether the second key is proper; and stopping execution of the installed

software in response to determining that the second key is not proper (per col. 6 line 58

to col. 7 line 28, Dolphin's system check for validity of the key, and if the key is expired,

requires a new key. It is the standard procedure that if an access code is not valid, the

access is denied, which in this case means termination of the software execution).

7.8.   As per claim 8, Dolphin is directed to the method of claim 1, further comprising:

during execution of the installed software, providing a prompt for entry of a second key;

determining whether the second key is proper; and stopping execution of the installed

software in response to determining that the second key is not proper (see response to

claims 1 and 7).

7.9.   The limitations of claims 9-20 are substantially the same as imitations of claims

1-8 above.

Conclusion

8.   **THIS ACTION IS MADE FINAL,** as no new ground of rejection is included. See

MPEP § 7.39. Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Farid Homayounmehr whose telephone number is (571)

272-3739. The examiner can be normally reached on 9 hrs Mon-Fri, off Monday

biweekly.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application
Information Retrieval (PAIR) system. Status information for published applications may be obtained
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direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Farid Homayounmehr

6/20/2007

KAMBIZ ZAND
SUPERVISORY PATENT EXAMINER